

**DECISION**

25030  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-209454

**DATE:** July 26, 1983

**MATTER OF:** Energy Complexes, Inc.

**DIGEST:**

1. The Government has no obligation to eliminate a competitive advantage that a firm may enjoy unless such advantage results from a preference or other unfair action by the Government. Where Bureau of Indian Affairs employee assisted Indian tribal group in the preparation of its offer in the course of his official duties and in furtherance of BIA's statutory responsibility towards Indian tribes, GAO will deny protester's contention that the assistance given the tribal group constituted a preference or other unfair action which the procuring agency had an obligation to eliminate.
2. GAO has no authority under the Freedom of Information Act to determine what information must be disclosed by an agency.
3. In the absence of any specific objection to "the merits of the award in general," GAO has no basis to review the reasonableness of the agency's evaluation of proposals.

Energy Complexes, Inc., protests the award of a contract to the Gila River Indian Community under request for proposals No. N00019-82-R-0071, issued by the Naval Air Systems Command (NAVAIR) for the establishment of a prototype domestic guayule bush rubber industry. Energy Complexes primarily bases its protest on the grounds that the Community received assistance from a Government employee in preparing its proposal. We deny the protest.

In response to the RFP, NAVAIR received timely offers from Energy Complexes, the Gila River Indian Community and a third offeror. After evaluation of these offers, NAVAIR awarded the contract to the Community; Energy Complexes thereupon filed this protest with our Office.

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The Government employee in question had been employed as a special projects officer in the Bureau of Indian Affairs, United States Department of the Interior, since 1974. Although the Community had requested, and the Assistant Secretary for Indian Affairs, Department of the Interior, had apparently recommended, that the special projects officer be transferred to employment with the Community under the provisions of the Indian Self-Determination and Education Assistance Act, §§ 102 and 105, 25 U.S.C. §§ 405f and 450i (1976), the Navy informs us that no official transfer occurred and that the special projects officer was still employed by BIA and was acting in that capacity when, as alleged, he helped the Community prepare its proposal.

Energy Complexes contends that the involvement of this Government employee in the preparation of the Community's proposal and the involvement of other Government employees in the evaluation of the proposals constituted a "conflict of interest." In particular, Energy Complexes implies that the involvement of the special projects officer, who may have represented himself as acting on behalf of the Community, violates 18 U.S.C. § 208 (1976). Section 208 generally prohibits employees of the Executive Branch from participating personally and substantially as a Government employee in an application, contract, or other particular matter in which, to his knowledge, he or the organization in which he is serving has a financial interest.

We see no conflict of interest or improper action here. First, the protester has not explained why it considers the Government employees who evaluated the proposals to have had a "conflict of interest," and there is nothing in the record to indicate that there was any relationship between the special projects officer and the proposal evaluators. Second, the role played by the special projects officer appears to be consistent with his official duties. 25 U.S.C. § 2 (1976) provides that the Commissioner of Indian Affairs shall have management of all Indian affairs and of all matters arising out of Indian relations, while 25 U.S.C. § 1a authorizes the Commissioner to delegate his powers and duties to offices


within the BIA. 25 U.S.C. § 13 makes the BIA responsible for directing and supervising industrial assistance to the Indian tribes and for the advancement and general administration of Indian property. As a special projects officer for new crops, the BIA employee in question was generally charged with planning and developing special projects and programs which involved multiple Federal agencies, including programs for new crop research and development in particular and the development of natural resources in general. The Department of the Interior has advised us that the assistance given by the special projects officer in helping the Gila River Indian community to prepare a proposal involving the development of a new crop, the quayule bush, with financing provided by the Navy, was rendered in the course of the employee's official duties and in furtherance of the Department of the Interior's and the BIA's statutory responsibilities towards Indian tribes. Although the protester asserts that the assistance provided to the Community gave the Community an unfair competitive advantage, under the circumstances we do not view the assistance as creating an unfair advantage such that NAVAIR would have been obligated to eliminate that advantage. See, e.g., Systems Engineering Associates Corporation, B-208439, January 31, 1983, 83-1 CPD 97; Dataproducts New England, Inc., et al., B-199024, January 9, 1981, 81-1 CPD 16.

Energy Complexes also contends that the BIA assistance to the Community was contrary to the provisions of Standard Form 33-A which states that, "No material, labor or facilities will be furnished by the Government unless otherwise provided for in the solicitation." This provision refers to assistance, such as use of Government property, to be provided to the contractor for use during performance. It does not apply to the provision of preaward assistance to offerors by agencies which are charged with furthering the economic development of the class of which the offeror is a member.

Finally, Energy Complexes indicates that its protest "is also founded upon the merits of the award itself," but states that it is unable to detail specific deficiencies in

the award process because the Navy refuses to release the proposals received in response to the solicitation. Energy Complexes therefore requests the opportunity to review the other proposals under the authority of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976). However, we have no authority under FOIA to determine what information must be disclosed by the Navy. See Ikard Manufacturing Company, B-211041, March 23, 1983, 83-1 CPD 302. Energy Complexes' recourse is to pursue its disclosure remedies under the procedures provided by FOIA. In the absence of any specific objections by the protester as to "the merits of the award," we have no basis to review the reasonableness of the Navy's evaluation of the proposals received.

The protest is denied.

*for*   
Comptroller General  
of the United States